

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gabriella Carpenter	Team: Squad #5	CCRB Case #: 201706698	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 08/07/2017 5:15 PM, Wednesday, 08/09/2017, Friday, 08/11/2017, Monday, 08/14/2017, Wednesday, 08/16/2017	Location of Incident: Alexander Ave/East 141st Street; East 149th Street/Melrose Ave; East 138th Street/Alexander Ave	Precinct: 40	18 Mo. SOL 2/7/2019	EO SOL 2/7/2019	
Date/Time CV Reported Thu, 08/17/2017 9:30 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/17/2017 9:30 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Malachi Mckenith	02680	945983	040 PCT
2. An officer			040 PCT
3. POF Brittany Moore	11846	958948	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Muhammad Malik	23102	962567	040 PCT
2. POM Andre Whyte	19246	962873	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Malachi Mckenith	Abuse: On August 7, 2017, at E 140th Street and Alexander Avenue in the Bronx, Police Officer Malachi Mckenith stopped § 87(2)(b)	
B.POM Malachi Mckenith	Abuse: On August 7, 2017, at E 140th Street and Alexander Avenue in the Bronx, Police Officer Malachi Mckenith stopped an individual.	
C.POM Malachi Mckenith	Force: On August 7, 2017, at E 140th Street and Alexander Avenue in the Bronx, Police Officer Malachi Mckenith used physical force against § 87(2)(b)	
D.POM Malachi Mckenith	Force: On August 7, 2017, at E 140th Street and Alexander Avenue in the Bronx, Police Officer Malachi Mckenith used a chokehold against § 87(2)(b)	
E.POM Malachi Mckenith	Force: On August 7, 2017, at E 140th Street and Alexander Avenue in the Bronx, Police Officer Malachi Mckenith restricted § 87(2)(b)'s breathing.	
F.POM Malachi Mckenith	Abuse: On August 7, 2017, in the 40th Precinct stationhouse and over the phone, Police Officer Malachi Mckenith threatened § 87(2)(b) with the use of force.	

Officer(s)	Allegation	Investigator Recommendation
G.POM Malachi Mckenith	Abuse: On August 7, 2017, in the 40th Precinct stationhouse, Police Officer Malachi Mckenith threatened § 87(2)(b) with the use of force.	
H.POM Malachi Mckenith	Force: On August 7, 2017, in the 40th Precinct stationhouse, Police Officer Malachi Mckenith used a chokehold against § 87(2)(b)	
I.POF Brittany Moore	Abuse: On August 7, 2017, in the 40th Precinct stationhouse, Police Officer Brittany Moore threatened § 87(2)(b) with the use of force.	
J.POM Malachi Mckenith	Abuse: On August 14, 2017, at E 149th Street and Melrose Avenue in the Bronx, Police Officer Malachi Mckenith threatened to arrest § 87(2)(b)	
K.POM Malachi Mckenith	Abuse: On August 14, 2017, at E 149th Street and Melrose Avenue in the Bronx, Police Officer Malachi Mckenith threatened to arrest § 87(2)(b)	
L.POM Malachi Mckenith	Abuse: On August 14, 2017, at E 149th Street and Melrose Avenue in the Bronx, Police Officer Malachi Mckenith stopped § 87(2)(b)	
M.POM Malachi Mckenith	Force: On August 14, 2017, at E 149th Street and Melrose Avenue in the Bronx, Police Officer Malachi Mckenith used physical force against § 87(2)(b)	
N.POM Malachi Mckenith	Abuse: On August 14, 2017, at E 149th Street and Melrose Avenue in the Bronx, Police Officer Malachi Mckenith arrested § 87(2)(b)	
O.POM Malachi Mckenith	Discourtesy: On August 14, 2017, at the 40th Precinct stationhouse, Police Officer Malachi Mckenith acted discourteously toward § 87(2)(b)	
P.POM Malachi Mckenith	Abuse: On August 14, 2017, at the 40th Precinct stationhouse, Police Officer Malachi Mckenith threatened § 87(2)(b) with the use of force.	
Q.POM Malachi Mckenith	Abuse: On August 16, 2017, near 560 Brook Avenue in the Bronx, Police Officer Malachi Mckenith threatened to arrest § 87(2)(b)	
R. An officer	Force: On August 16, 2017, in the 40th Precinct stationhouse, an officer used physical force against § 87(2)(b)	
S.POM Malachi Mckenith	Abuse: On August 16, 2017, in the 40th Precinct stationhouse, Police Officer Malachi Mckenith threatened § 87(2)(b) with the use of force.	

Case Summary

§ 87(2)(b) filed a complaint on behalf of her § 87(2)(b)-old son, § 87(2)(b) over the phone on August 17, 2017.

On August 7, 2017, at approximately 5:15 p.m., Police Officer Malachi Mckenith of the 40th Precinct, who was working with Police Officer Andre Whyte of the 40th Precinct, stopped § 87(2)(b) and an unidentified individual near East 140th Street and Alexander Avenue in the Bronx (**Allegations A and B**). § 87(2)(b) ran away and PO Mckenith pursued him then pushed him, causing § 87(2)(b) to fall (**Allegation C**). § 87(2)(b) alleged that after handcuffing him, PO Mckenith pulled him off the ground by his hood, restricting his breathing with the chokehold (**Allegations D and E**). Per § 87(2)(b)s and § 87(2)(b)s statements, after § 87(2)(b) was arrested for robbery and taken to the stationhouse, PO Mckenith called § 87(2)(b) and threatened to use a Taser against § 87(2)(b) (**Allegation F**). § 87(2)(b) alleged that PO Mckenith threatened to slap him (**Allegation G**). § 87(2)(b) also alleged that PO Mckenith grabbed him by his neck and Police Officer Brittany Moore of the 40th Precinct threatened to hit him with an asp or baton (**Allegations H and I**).

On August 14, 2017, at approximately 4:00 p.m., PO Mckenith was driving with PO Moore when he saw § 87(2)(b) and his friend, known to the investigation only as § 87(2)(b) on the sidewalk at Courtlandt Avenue and East 150th Street in the Bronx. PO Mckenith approached them and threatened to arrest them, then pursued § 87(2)(b) when he ran away (**Allegations J through L**). § 87(2)(b) alleged that when PO Mckenith reached him, PO Mckenith grabbed him by his hair (**Allegation M**). § 87(2)(b) was arrested for disorderly conduct and taken to the stationhouse (**Allegation N**). § 87(2)(b) testified that he spit on the floor in the stationhouse then PO Mckenith got a napkin, cleaned up the spit, and wiped it on § 87(2)(b)s face (**Allegation O**). § 87(2)(b) also alleged that PO Mckenith threatened to punch him (**Allegation P**).

On August 16, 2017, at 1:00 or 2:00 p.m., § 87(2)(b) testified that he was walking near 560 Brook Avenue in the Bronx when PO Mckenith drove near him and threatened to arrest him (**Allegation Q**).

§ 87(2)(b) was arrested on August 16, 2017, at approximately 11:00 p.m. for disorderly conduct and taken to the 40th Precinct stationhouse. § 87(2)(b) alleged that he refused to leave the bathroom in the stationhouse, so PO Mckenith ordered approximately eight officers to carry him out. One of these officers—who was ultimately unable to be identified—allegedly kicked § 87(2)(b)s leg (**Allegation R**). § 87(2)(b) further alleged that PO Mckenith threatened to break his arm in the juvenile room (**Allegation S**).

There is no video footage of this incident.

Mediation, Civil and Criminal Histories

- Mediation was not offered in this case due to § 87(2)(b)s arrest.
- As of November 20, 2017, no notice of claim has been filed with the comptroller's office in regard to these incidents (BR 13).
- § 87(2)(b)s criminal history could not be obtained as he is a juvenile.

Civilian and Officer CCRB Histories

- § 87(2)(b)

- PO Mckenith has been a member of the service for nine years and has had 33 other CCRB allegations pled against him in 11 cases, including the following: an allegation of a threat of arrest and an allegation of offensive language (ethnicity) were substantiated against him in CCRB 201308493 and an allegation of physical force was substantiated against him in CCRB 201700407. § 87(2)(g)
- Five physical force allegations have been pled against him, including one allegation in CCRB 201207470 that was unsubstantiated, one allegation in CCRB 201400407 that was substantiated, two allegations in CCRB 201404954 that were exonerated, and one in CCRB 201603532 that was exonerated
- Three threat of force allegations have been pled against him, including one allegation in CCRB 201207470 that was unsubstantiated, one allegation in CCRB 201308493 that was unsubstantiated, and one in CCRB 201603532 that was unsubstantiated.
- Three threat of arrest allegations have been pled against him, including one allegation in CCRB 201301610 that was exonerated, one allegation in CCRB 201308493 that was substantiated, and one allegation in CCRB 201310430 that was closed as complainant uncooperative.
- PO Moore has been a member of the service for two years and has had four other CCRB allegations pled against her in one case, none of which were substantiated § 87(2)(g)

Potential Issues

- § 87(2)(b) and § 87(2)(b) could not provide full names or contact information for any witnesses or victims they identified except § 87(2)(b) and as a result the investigation could not obtain statements from any other witnesses or victims.

Findings and Recommendations

Allegations not pleaded: While § 87(2)(b) alleged that § 87(2)(b) told her that PO Mckenith had looked through his phone while it was unlocked before she arrived, a search of a recording device allegation was not pleaded against PO Mckenith as § 87(2)(b) denied this allegation, stating that PO Mckenith tried to get him to unlock his phone but he did not.

Allegation A: Abuse of Authority: On August 7, 2017, at E 140th Street and Alexander Avenue in the Bronx, Police Officer Malachi Mckenith stopped § 87(2)(b)

Allegation B: Abuse of Authority: On August 7, 2017, at E 140th Street and Alexander Avenue in the Bronx, Police Officer Malachi Mckenith stopped an individual.

Allegation C: Force: On August 7, 2017, at E 140th Street and Alexander Avenue in the Bronx, Police Officer Malachi Mckenith used physical force against § 87(2)(b)

Allegation D: Force: On August 7, 2017, at E 140th Street and Alexander Avenue in the Bronx, Police Officer Malachi Mckenith used a chokehold against § 87(2)(b)

Allegation E: Force: On August 7, 2017, at E 140th Street and Alexander Avenue in the Bronx, Police Officer Malachi Mckenith restricted § 87(2)(b)'s breathing.

§ 87(2)(b) testified that on August 7, 2017, he was walking from his youth program to the subway when he ran into an unidentified acquaintance whose name he did not know and

they started walking together (BR 01). § 87(2)(b) is a § 87(2)(b)-old, 5'8" tall, 178 pound black male, with black hair and brown eyes. He could only recall that he was wearing a hooded sweatshirt at the time of the incident. After about a block, PO Mckenith stopped the car he was driving about two blocks away from them then got out of his car and started running toward them. § 87(2)(b) and his acquaintance started to run away because they did not know why an officer was chasing them since he had not done anything illegal that day. When PO Mckenith reached § 87(2)(b) he pushed his right side with two hands. The ground was wet and § 87(2)(b) fell onto his left side but he was not injured. PO Mckenith held § 87(2)(b)'s head on the ground for about five minutes while he handcuffed him. PO Mckenith then pulled § 87(2)(b)'s hood, choking him a little, and told him to get up. PO Mckenith let go of § 87(2)(b)'s hood after he stood up. The officers told § 87(2)(b)'s friend to go home and he left. Two other officers drove § 87(2)(b) to the stationhouse. He was not injured from the apprehension.

PO Mckenith testified that he and PO Whyte were patrolling when they received a radio run about someone being robbed of their cell phone in front of the library at East 140th Street and Alexander Avenue in the Bronx (BR 02). The suspects were described as a black male wearing a blue hooded sweatshirt and dark pants and a male wearing a white and red shirt. PO Mckenith could not recall if there was any information about whether the suspects were armed in the original call. The officers arrived about a minute after getting the call and saw § 87(2)(b) and another male standing in front of the library walking back and forth and looking in the windows, appearing to case the location. § 87(2)(b) was wearing a blue hooded sweatshirt and sneakers and the other male was wearing a white shirt, shorts, and a red sweater. The officers asked central dispatch for the description again to confirm that the males matched, and received the same description that fit the two males in front of the library. While the officers were still in their car, the males started running away. PO Mckenith and PO Whyte immediately got out of the car. PO Whyte pursued the shorter male and PO Mckenith pursued § 87(2)(b) the officers decided to chase the males solely because they matched the description of the suspects they were looking for. The shorter male ran into a NYCHA development and PO Whyte was not able to apprehend him. PO Mckenith was only about five feet behind § 87(2)(b) and caught up with him quickly. PO Mckenith yelled for § 87(2)(b) to stop but he kept running. PO Mckenith touched § 87(2)(b)'s back with his hands, then pushed § 87(2)(b)'s back so that he fell onto his stomach on the ground because it was the best way to quickly take him down without hurting himself. Once § 87(2)(b) was on the ground, PO Mckenith immediately pulled his arms behind his back and handcuffed him while standing with one leg on either side of him. § 87(2)(b) did not try to get up, move his body, or resist. § 87(2)(b) said that he could not breathe while he was on the ground but PO Mckenith was not touching him at the time. PO Mckenith did not hold § 87(2)(b)'s head on the ground and could not recall touching his head at all. After § 87(2)(b) said that he could not breathe, PO Mckenith put his hands under § 87(2)(b)'s armpits and pulled him up. § 87(2)(b) made his body go limp but eventually stood on his own. PO Mckenith stated that he may have initially pulled § 87(2)(b)'s hood from behind to get him to stand up but only would have pulled it for a few seconds if he pulled it at all.

PO Whyte testified that he and PO Mckenith responded to a radio run that two black males had robbed or tried to rob someone's cell phone (BR 03). PO Whyte could not recall getting any further description of the suspects or whether the call said if the suspects were armed. When they arrived on the scene less than two minutes later, the officers saw two black males standing on the corner who fit the description but could not see if either appeared to be holding a

cell phone. PO Whyte initially said that no one else was in the area but also stated that PO Mckenith saw other civilians pointing out the black males; PO Whyte stated that he could not see the other civilians pointing out the suspects from his angle. PO Whyte could not recall whether they called central dispatch to get any additional information about the suspects or to have the description repeated. The two males seemed to realize that officers had arrived because of the people pointing at them, and the males ran northbound on Alexander Avenue. PO Mckenith immediately got out of the car and ran after the two males while PO Whyte parked the car. PO Whyte and PO Mckenith had intended to approach the two black males to place them under arrest because they were the only people in the area who met the description they had received, PO Mckenith saw other civilians pointing out the two males to the officers, and the males ran when they realized the officers were there. By the time PO Whyte got out of the car, he had lost sight of one of the males and PO Mckenith was walking the other male, § 87(2)(b) to the car in handcuffs. PO Whyte did not see when PO Mckenith handcuffed § 87(2)(b) nor did he know whether § 87(2)(b) was taken to the ground. Neither PO Mckenith nor § 87(2)(b) was injured, and § 87(2)(b) did not complain of any pain or injuries. PO Whyte did not see PO Mckenith use any force against § 87(2)(b).

The Event regarding the incident states that two black males between 10 and 12 years old tried to steal someone's cell phone (BR 12). One is later described to be wearing a white shirt, then a white and red shirt, and the other a blue shirt.

Police pursuit of an individual significantly impedes the person's freedom of movement and thus must be justified by reasonable suspicion that a crime has been, is being, or is about to be committed. Flight alone is insufficient to justify a pursuit, but flight combined with other specific circumstances indicating that the suspect may be engaged in criminal activity, could provide the predicate necessary to justify pursuit. *People v. Holmes*, 81 N.Y.2d 1056, 1057 (1993) (BR 07), citing *People v. Martinez*, 80 NY2d 444, 447 (1992) (BR 08).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. Patrol Guide Procedure 221-01 (BR 09).

PO Mckenith testified that about a minute after receiving the call about an attempted robbery, he saw two individuals who matched the description (black males, one in a white and red shirt and one in a blue hooded sweatshirt) in front of the reported location who ran away before the officers approached them; § 87(2)(b) could only recall that he was wearing a hooded sweatshirt at the time, which matches PO Mckenith's testimony. PO Whyte testified that PO Mckenith told him that other civilians were pointing out § 87(2)(b) and the male he was with when they saw the officers arrive on the scene, though he stated that he did not see those civilians pointing himself, and PO Mckenith did not testify to anyone pointing out § 87(2)(b) § 87(2)(b)

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(b) testified that PO Mckenith pursued him and the unidentified individual he was with. PO Mckenith testified that he only pursued § 87(2)(b) and that PO Whyte pursued the other individual but did not catch up to him. PO Whyte testified that by the time he got out of the car, § 87(2)(b) and the unidentified individual had disappeared from view, and he did not

pursue them. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b). It is undisputed that PO Mckenith pushed § 87(2)(b) as § 87(2)(b) was attempting to run away from him, causing § 87(2)(b) to fall on his chest or his side, and that § 87(2)(b) was not injured from this. § 87(2)(b), § 87(2)(g)

PO Mckenith testified that he may have pulled on § 87(2)(b)'s hood for a few seconds, but would not have pulled him up by the hood as § 87(2)(b) testified. PO Mckenith stated that § 87(2)(b) complained about having trouble breathing, but that it was when § 87(2)(b) was lying on the ground without PO Mckenith touching him, and not when PO Mckenith was helping him up so that he could breathe. § 87(2)(b), § 87(2)(g)

Allegation F: Abuse of Authority: On August 7, 2017, in the 40th Precinct stationhouse and over the phone, Malachi Mckenith threatened § 87(2)(b) with the use of force.

Allegation G: Abuse of Authority: On August 7, 2017, in the 40th Precinct stationhouse, Police Officer Malachi Mckenith threatened § 87(2)(b) with the use of force.

Allegation H: Abuse of Authority: On August 7, 2017, in the 40th Precinct stationhouse, Police Officer Malachi Mckenith used a chokehold against § 87(2)(b)

Allegation I: Abuse of Authority: On August 7, 2017, in the 40th Precinct stationhouse, Police Officer Brittany Moore threatened § 87(2)(b) with the use of force.

§ 87(2)(b) testified that PO Mckenith took him to the juvenile room in the stationhouse, where he spit on the ground multiple times. PO Mckenith took out his Taser and turned it on several times so that § 87(2)(b) could hear it and said twice that he would use his Taser on § 87(2)(b). PO Mckenith then called § 87(2)(b). § 87(2)(b) heard PO Mckenith tell § 87(2)(b) that he would have to use his Taser on § 87(2)(b) and that, “we’re gonna make him shake.” When he was off the phone, PO Mckenith grabbed the front of § 87(2)(b)'s neck with one hand for about two minutes, but it did not restrict his breathing. While holding his neck, PO Mckenith said, “Shut up before I slap you.” § 87(2)(b) told PO Mckenith that he wanted PO Mckenith to slap him. PO Mckenith hit § 87(2)(b)'s head with his head once. PO Moore entered the juvenile room, took out her stick, and told PO Mckenith, “I’m gonna end up hitting him with it,” then left the room.

§ 87(2)(b) testified that she received a call from PO Mckenith while § 87(2)(b) was at the stationhouse (BR 04). PO Mckenith said that he was going to use his Taser and pepper spray on § 87(2)(b) and her friend, § 87(2)(b) who was also on the line, told him not to hurt § 87(2)(b) and just to scare him.

§ 87(2)(b) testified that § 87(2)(b) added her to a phone call with PO Mckenith while the call was already underway (BR 05). PO Mckenith told § 87(2)(b) and § 87(2)(b) that he had head-butted § 87(2)(b). He did not say that he had used any other force, nor did he threaten to use any other force. § 87(2)(b) did not hear him mention using a Taser or pepper

spray, but § 87(2)(b) told her later that during the phone call that the officer had threatened to use his Taser against § 87(2)(b).

PO Mckenith testified that he took § 87(2)(b) to the juvenile room in the stationhouse then called § 87(2)(b) after about an hour and told her that § 87(2)(b) was being disrespectful and asked if she could talk to him. § 87(2)(b) called back with § 87(2)(b) on the line and asked what had happened. PO Mckenith never told § 87(2)(b) that he would use force against him, including a Taser or pepper spray, nor did he say that he had head-butted him. While they were on the phone, § 87(2)(b) began kicking and spitting more aggressively. PO Mckenith put a medical mask on him but § 87(2)(b) bit it off. PO Mckenith tried to put another mask on him but § 87(2)(b) tried to bite his finger. PO Mckenith told § 87(2)(b) that if he spit on him it would be an extra charge; PO Mckenith stated during the interview that § 87(2)(b) could have been charged with assault in the second degree for spitting on a police officer. PO Mckenith did not touch or grab § 87(2)(b)'s neck, nor did he hit § 87(2)(b) with his head. PO Mckenith was not aware of an officer removing their baton in front of § 87(2)(b) or threatening to hit him with it. PO Mckenith did not have a Taser as he is not Taser trained and no other officer took a Taser out in front of § 87(2)(b). PO Mckenith did tell § 87(2)(b) that if he kept acting up then a Taser would be used against him and he would be taken to the hospital, by which he meant that ESU would be called and would use a Taser on him. At one point PO Mckenith told § 87(2)(b) "If you don't stop acting up, you're going to do the electric boogie." PO Mckenith never specified to § 87(2)(b) who would use a Taser on him. PO Mckenith did not threaten to hit § 87(2)(b) or say, "Shut up or I'm gonna slap you."

PO Whyte testified that he did not recall the officers having any problems with § 87(2)(b) in the stationhouse, PO Mckenith making any threats to § 87(2)(b) or § 87(2)(b) ever spitting. He did not see an officer take a Taser, baton, or asp out in the juvenile room, turn on a Taser so that § 87(2)(b) could hear it, or threaten to use a Taser, baton, or asp on § 87(2)(b). No other officers went into the juvenile room while PO Whyte was there, and he did not see PO Brittany Moore in the stationhouse that day. PO Mckenith did not threaten to hit § 87(2)(b) including saying, "Shut up before I hit you." PO Whyte did not see PO Mckenith touch or use force against § 87(2)(b) in the stationhouse, including grabbing his neck or head-butting him. PO Mckenith called § 87(2)(b) in the juvenile room. PO Whyte did not recall PO Mckenith telling § 87(2)(b) that he would use force against § 87(2)(b) including telling § 87(2)(b) that he would use a Taser against § 87(2)(b) or saying that he would "make § 87(2)(b) shake." He did not recall PO Mckenith saying that he would use pepper spray against § 87(2)(b) or that he had head-butted § 87(2)(b).

PO Moore testified that she was in court for her entire tour and did not see § 87(2)(b) or PO Mckenith when she signed in and out at the stationhouse (BR 06). She did not go to the juvenile room while she was at the stationhouse, nor did she tell § 87(2)(b) that she would use force against him. She did not remove any weapon from her belt in front of § 87(2)(b) or say, "I'm gonna end up hitting him with it."

PO Moore wrote in her memo book that she was assigned to family court on the date of the incident (BR 14). She signed in at 9:09 a.m. and signed out at 12:40 p.m.

A conducted electrical weapon (Taser) should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present. Patrol Guide Procedure 221-08 (BR 10). Officers shall not use any level of force on handcuffed or otherwise restrained subjects unless necessary to

Mckenith got out of his car and grabbed § 87(2)(b)'s hair with one hand, which hurt and made § 87(2)(b) stop running. PO Mckenith said, "Didn't I tell you to leave from this corner?" PO Mckenith arrested § 87(2)(b) and took him to the stationhouse.

PO Mckenith testified that he noticed § 87(2)(b) standing with another male (not the male involved in the August 7, 2017 incident) and an older woman while on the way to a location that he was responding to. § 87(2)(b) was not committing a crime but PO Mckenith got out of the car and told him to go home several times because he had promised § 87(2)(b) that he would send him home if he saw him. PO Mckenith asked the other male what he was doing around there and the male said that he was going to his program; PO Mckenith assumed he was referring to the mental health clinic across the street. PO Mckenith told § 87(2)(b) and the other male, "Go home or your parents will be picking you up from a stationhouse." He did not use the word "arrest" but meant that they would be arrested for disorderly conduct because he had told them to go home and they had not obeyed. He stated that by not leaving when he told them to, § 87(2)(b) and the other male had violated subsection 6 of the disorderly conduct statute. There were other people in the area but neither § 87(2)(b) nor the other male was doing anything to disturb them, nor did they cause a public inconvenience. PO Mckenith told § 87(2)(b) that he needed to leave because he was a repeat offender, but it was not illegal for § 87(2)(b) to be in the area. After speaking to PO Mckenith for about a minute, § 87(2)(b) and the other male ran away. PO Mckenith got back into his car and drove around the block, then saw § 87(2)(b) and the other male standing in the same spot they had been in before. PO Mckenith told them several times from the car to go home. § 87(2)(b) and the other male ran into the mental health clinic across the street. PO Mckenith and PO Moore pursued § 87(2)(b) because he did not live in the area and was not listening to PO Mckenith's orders to go home. PO Mckenith's intention was to walk § 87(2)(b) to the subway station and swipe him in with his NYPD metro card so that he would go home; he was not pursuing the other male because he did not know him or know of him committing a crime a few days before. When the officers reached the mental health clinic, § 87(2)(b) was in the back trying to hide behind a pillar. When PO Mckenith reached § 87(2)(b) he touched his arm with his hand. § 87(2)(b) was not under arrest at that point and PO Mckenith still intended to take him to the subway. § 87(2)(b) walked down the street with the officers without the officers using any force against him. After a minute, § 87(2)(b) ran away again. PO Moore got into the car and PO Mckenith pursued § 87(2)(b) on foot. PO Mckenith reached him about 50 feet from where he had started running. PO Mckenith pursued § 87(2)(b) for committing disorderly conduct and because he wanted § 87(2)(b) to go home and not try to rob anyone; there were no other reasons for pursuing him at any point. Once PO Mckenith reached § 87(2)(b) he placed § 87(2)(b) under arrest for disorderly conduct, handcuffing and putting him in the car without using force. He did not touch or grab § 87(2)(b)'s hair.

PO Moore testified that she and PO Mckenith were driving to a job when PO Mckenith recognized someone on the sidewalk and got out of the car. PO Moore did not know why he was approaching § 87(2)(b) who was with a friend about his age. PO Moore did not know what PO Mckenith intended to do when he approached § 87(2)(b). There were other people around, but neither § 87(2)(b) nor his friend did anything to cause a public inconvenience from what PO Moore could see. She did not see § 87(2)(b) or his friend do anything that would have constituted disorderly conduct or another crime. PO Mckenith spoke to § 87(2)(b) for about five minutes but PO Moore could not hear their conversation and did not hear whether PO Mckenith said that he would arrest them. After PO Mckenith spoke to § 87(2)(b)

for a few minutes, § 87(2)(b) and his friend ran away into a building about a block away. PO Mckenith got into the car and drove them to the building that § 87(2)(b) had run into. PO Mckenith said that he recognized § 87(2)(b) from a robbery the week before and he had told § 87(2)(b) that he would send him home if he saw him; PO Mckenith did not say anything about § 87(2)(b) committing another crime that day. The officers both entered the building, which seemed to be a mental health facility, but PO Moore stayed by the door. PO Mckenith walked to the back of the facility where § 87(2)(b) appeared to be hiding. § 87(2)(b) walked out of the facility in front of PO Mckenith without PO Mckenith touching him or using any force to make him walk out. PO Moore got back into the car and PO Mckenith walked with § 87(2)(b) to the train station, which was about a block away. PO Moore followed PO Mckenith and § 87(2)(b) to the train station, but she had to make a U-turn and was not next to them when they were walking. When PO Moore saw them again, PO Mckenith was walking § 87(2)(b) to the car in handcuffs. PO Mckenith did not tell her why he had placed § 87(2)(b) in handcuffs and PO Moore had not seen what had happened immediately before § 87(2)(b) was handcuffed or when he was being placed in handcuffs. PO Mckenith did not tell PO Moore what crime § 87(2)(b) was being arrested for. PO Moore did not see PO Mckenith use any force against § 87(2)(b) before he was placed in the car, including grabbing § 87(2)(b)'s hair, but could not testify to whether force was used during the handcuffing.

It is undisputed that § 87(2)(b) was arrested for disorderly conduct, handcuffed, and taken to the stationhouse. He was released from the stationhouse into § 87(2)(b)'s custody.

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof when they congregate with other persons in a public place and refuse to comply with a lawful order of the police to disperse. NY Penal Law 240.20(6) (BR 1).

Police pursuit of an individual significantly impedes the person's freedom of movement and thus must be justified by reasonable suspicion that a crime has been, is being, or is about to be committed. *People v. Holmes*, 81 N.Y.2d 1056, 1057 (1993), citing *People v. Martinez*, 80 NY2d 444, 447 (1992).

§ 87(2)(b), § 87(2)(g)

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Allegation O: Discourtesy: On August 14, 2017, at the 40th Precinct stationhouse, Police Officer Malachi Mckenith acted discourteously toward § 87(2)(b)
Allegation P: Abuse of Authority: On August 14, 2017, at the 40th Precinct stationhouse, Police Officer Malachi Mckenith threatened § 87(2)(b) with the use of force.

§ 87(2)(b) testified that while he was in the juvenile room at the stationhouse, PO Mckenith told him, “If you were older I would punch you in the face.” PO Mckenith also said, “We could fight right now. I’m gonna take the handcuffs off.” PO Mckenith took § 87(2)(b)s handcuffs off and § 87(2)(b) spat on the floor. After he spat, PO Mckenith put the handcuffs back on him. PO Mckenith left and then returned with a napkin. He wiped the spit off the floor then wiped it on § 87(2)(b)s face. PO Mckenith then put about five medical masks on § 87(2)(b)s face so that he could not spit or take the masks off. § 87(2)(b) picked him up about three hours later.

PO Mckenith testified that he put § 87(2)(b) in the juvenile room at the stationhouse. He did not say that he would use force against § 87(2)(b) or that he would fight him if he were older, though § 87(2)(b) kept telling PO Mckenith that he wanted to fight him. § 87(2)(b) spit on the floor several times and PO Mckenith used a mop to clean it up. He never used napkins to clean the spit, nor did he wipe the spit on § 87(2)(b)

PO Moore testified that she was in and out of the juvenile room in the half hour § 87(2)(b) was there before § 87(2)(b) picked him up. PO Moore did not hear PO Mckenith say that he would use any force against § 87(2)(b) including “If you were older, I would punch you in the face,” or “I’m gonna take the handcuffs off, we can fight right now.” § 87(2)(b) spit on the floor many times but PO Moore did not remember whether PO Mckenith ever cleaned up any of the spit but she did not see him wipe any spit on § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation Q: Abuse of Authority: On August 16, 2017, near 560 Brook Avenue in the Bronx, Police Officer Malachi Mckenith threatened to arrest § 87(2)(b)

§ 87(2)(b) testified that on August 16, 2017, at 1:00 p.m. or 2:00 p.m., he was walking alone near § 87(2)(b) when PO Mckenith pulled up next to him in a marked SUV. PO Mckenith was alone in the car and said to § 87(2)(b) through the window, “The next time I see you I’m gonna arrest you.”

PO Mckenith testified that he only saw § 87(2)(b) later on August 16, 2017, after 11:00 p.m., when he saw § 87(2)(b) in the stationhouse. He did not threaten to arrest § 87(2)(b) the next time he saw him.

§ 87(2)(b), § 87(2)(g)

Allegation R: Force: On August 16, 2017, in the 40th Precinct stationhouse, an officer used physical force against § 87(2)(b)

Allegation S: Abuse of Authority: On August 16, 2017, in the 40th Precinct stationhouse, Police Officer Malachi Mckenith threatened § 87(2)(b) with the use of force.

It is undisputed that § 87(2)(b) was arrested for disorderly conduct on August 16, 2017 at approximately 11:00 p.m. and was brought to the 40th Precinct stationhouse.

§ 87(2)(b) testified that after he was arrested, PO Mckenith took him to the bathroom in the stationhouse, told him to sit down on the floor, then handcuffed him. After handcuffing him, PO Mckenith told § 87(2)(b) to get up but he refused. PO Mckenith instructed about eight officers to carry § 87(2)(b) to the juvenile room. One of the officers kicked § 87(2)(b)'s leg multiple times while they were carrying him. In the juvenile room, § 87(2)(b) knocked over a computer and spat on the floor multiple times. PO Mckenith handcuffed § 87(2)(b)'s left arm through the bars of the cell. § 87(2)(b) tried to move his hand because it hurt how it was handcuffed and was making black marks on his wrist. PO Mckenith said, "Move it again and I'm gonna break it."

PO Mckenith testified that he received a call from PO Alexander, who asked him to come into the stationhouse because § 87(2)(b) had been arrested and he wanted PO Mckenith to deal with him since they had had previous interactions. PO Alexander told PO Mckenith that § 87(2)(b) had been arrested by a sergeant in the detective unit for trying to hit a car with a brick at East 140th Street and Alexander Avenue in the Bronx; § 87(2)(b) had not actually hit the car. When PO Mckenith arrived at the stationhouse, § 87(2)(b) was at the desk. § 87(2)(b) refused to talk to the officers, and had not provided his name or his mother's information, so PO Mckenith wrote down § 87(2)(b)'s information on a card and gave it to the desk sergeant. He then took § 87(2)(b) to the bathroom to search him. After the search, § 87(2)(b) walked out of the bathroom. PO Mckenith did not instruct officers to carry him, nor did an officer kick § 87(2)(b)'s leg while he was at the stationhouse. PO Mckenith did not threaten to use force against § 87(2)(b) or say that he would break his arm.

§ 87(2)(b), § 87(2)(g)

A § 87(2)(b), § 87(2)(g)

Squad:

Investigator:

Signature

Print

Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date